

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, STATE
OF CALIFORNIA, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF GEORGIA,
STATE OF INDIANA, STATE OF
MONTANA, STATE OF NEVADA,
STATE OF NORTH CAROLINA, STATE
OF TENNESSEE, STATE OF
WASHINGTON, STATE OF
WISCONSIN, COMMONWEALTH OF
MASSACHUSETTS, and
COMMONWEALTH OF VIRGINIA, ex
rel. TIMOTHY SIRLS,

Plaintiffs,

v.

KINDRED HEALTHCARE, INC.,
KINDRED HEALTHCARE OPERATING,
INC., KINDRED HEALTHCARE
SERVICES, INC., KINDRED NURSING
CENTERS EAST, LLC, KINDRED
NURSING CENTER WEST, LLC,
KINDRED NURSING CENTERS SOUTH,
LLC, and KINDRED NURSING
CENTERS NORTH, LLC.,
Defendants.

CIVIL ACTION

NO. 16-683

ORDER

AND NOW, this 4th day of February, 2021, upon consideration of Defendants' Motion to Dismiss Second Amended Complaint (Document No. 66, filed August 25, 2020), Defendants' Request for Judicial Notice (Document No. 67, filed August 25, 2020), Relator's Memorandum of Law in Opposition to Motion to Dismiss Plaintiff-Relator's Second Amended Complaint (Document No. 68, filed October 6, 2020), Defendants' Reply in Support of Motion to Dismiss Second Amended Complaint (Document No. 72, filed October 27, 2020), and United States' Statement of Interest Regarding Kindred's Motion to Dismiss Relator's Second Amended

Complaint (Document No. 77, filed December 15, 2020), for the reasons stated in the Memorandum dated February 4, 2021, **IT IS ORDERED** that defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. That part of defendants' Motion to Dismiss seeking dismissal of relator's claims under the California False Claims Act (Count Three), Connecticut False Claims Act (Counts Six & Seven), Tennessee Medicaid False Claims Act, and Tennessee False Claims Act (Counts Twenty-Two & Twenty-Three) is **GRANTED** and all such claims are **DISMISSED**.
2. That part of defendants' Motion to Dismiss seeking dismissal of relator's claims based on the theory express/implied false certification of compliance with federal laws and regulations governing staffing and allocation and use of Government funds in Counts One, Two, Four, Five, Eight through Twenty-One, and Twenty-Four through Twenty-Nine is **GRANTED** and all such claims are **DISMISSED**.
3. That part of defendants' Motion to Dismiss seeking dismissal of relator's alleged attempt to assert a cause of action for Medicaid claims submitted in those states not named in the Second Amended Complaint is **GRANTED** and all such claims, to the extent they are included in relator's Second Amended Complaint, are **DISMISSED**.
4. Defendants' Motion to Dismiss is **DENIED** with respect to relator's remaining claims based on the theories of factual falsity and express false certification of accuracy in MDS forms and Form 1500s in Counts One, Two, Four, Five, Eight through Twenty-One, and Twenty-Four through Twenty-Nine.

5. All dismissals in this Order are with prejudice.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.